

CITY OF MORGAN HILL  
SPECIAL & REGULAR CITY COUNCIL AND JOINT  
SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES - DECEMBER 20, 2000

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special and meeting to order at 6:35 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairman Kennedy

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council & Redevelopment Agency Action(s)***

**CLOSED SESSION:**

City Attorney/Agency Counsel Leichter announced the following closed session item:

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code section 54956.9(c) (One potential Case)

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the closed session item to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION:**

Mayor/Chairman Kennedy adjourned the meeting to closed session at 6:37 p.m.

**RECONVENE:**

Mayor/Chairman Kennedy reconvened the regular meeting at 7:11 p.m.

**CLOSED SESSION ANNOUNCEMENT:**

The Closed Session announcement was deferred to the City Attorney's Report.

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, former Mayor/Council Member Joe Martucci led the Pledge of Allegiance.

## **PRESENTATIONS**

Mayor Kennedy, assisted by Lisa Lewis, City Clerk's Office, presented Saving Bonds to the Millennium Poster Contest Winners as follows: Kindergarten - 4<sup>th</sup> Grade: Eric Lau (1<sup>st</sup> place), Ariel Mosbrucker (2<sup>nd</sup> place) and Nick Weldon (3<sup>rd</sup> place) and Rachel Chenoweth (Honorable Mention); 5<sup>th</sup> - 8<sup>th</sup> Grade: Jina Park (1<sup>st</sup> place), Maia Martucci (2<sup>nd</sup> place), and Kelly Rose Joyce (3<sup>rd</sup> place) and Shaila Patel (Honorable Mention); and 9<sup>th</sup> - 12<sup>th</sup> Grade: Rebecca Leverton (1<sup>st</sup> place), Mike Norton (2<sup>nd</sup> place), Olivia Esenbock (3<sup>rd</sup> place) and Deborah Pink (Honorable Mention)

## **EMPLOYEE SERVICE AWARDS**

The following employees were recognized for their years of service: Terrie Booten and Ken DeLuna (20 year service award) and David Bischoff (15 year service award).

## **CERTIFICATE OF APPRECIATION**

Mayor Kennedy presented Lou Mirviss with a certificate of appreciation as an outgoing member of the *Morgan Hill Rent Stabilization Commission*.

## **CITY COUNCIL REPORT**

Council Member Tate reported the following: 1) The City has been working with the Morgan Hill Unified School District to enter into a Memorandum of Understanding (MOU) for City provision of sewer and water to the Sobrato site in exchange for nine conditions agreed upon by both the City and the School District. He indicated that the MOU has been signed. 2) The Fire Master Plan update is underway. A meeting has been held with the City's consultant, including a kick off meeting held on November 30 by the Citizens Advisory Committee. The Committee has come up with over 30 goals to be reviewed during the process. 3) At its last meeting, the City Council selected Main/DeWitt for the library site based on Proposition 14 funding. He indicated that Recreation Manager Spier and he attended workshops on Proposition 14 and that input has been provided to the State in terms of how the guidelines should be shaped. He stated that on December 15, Ms. Spier released an RFP to get an architect for the library project on board. He indicated that the City Council appointed a Library Building Committee consisting of 14 members composed of Library Commissioners, representatives from the School District and the County library system. The City will kick off its efforts on January 9 with a meeting. He welcomed the public's input as the City goes through the building definition process.

## **CITY MANAGER'S REPORT**

City Manager Tewes reported that City administrative offices will be closed from Monday, December 25, 2000 through Monday, January 1, 2001 for the holiday season. Administrative Offices will reopen January 2, 2001. He clarified that the City will be providing emergency services during this period.

## **CITY ATTORNEY'S REPORT**

City Attorney/Agency Counsel Leichter reported that no reportable action was taken on the above listed closed session items. She had no other items to report.

## **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to comments for items not appearing on the agenda. No comments were offered.

Mayor/Chairman Kennedy indicated that a request has been made to move up the Redevelopment Agency Consent Calendar immediately following the City Council Consent Calendar.

## ***City Council Action***

### **CONSENT CALENDAR:**

Council Member Chang requested a staff report be presented on Consent Calendar Item 11.

City Manager Tewes requested that Item 10 be pulled from the Consent Calendar and that it be considered under Other Business.

City Clerk Torrez informed the City Council that speaker cards have been submitted for Consent Calendar Items 7 and 9.

Mayor Kennedy requested to comment on Consent Calendar Item 3.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **approved** consent calendar items 1, 2, 4, 5, 6, 8, 12, 13 and 14 as follows:*

### **1.        NOVEMBER 2000 FINANCE AND INVESTMENT REPORT**

**Action: Accepted and Filed Report.**

2. **EXCEPTION TO LOSS OF BUILDING ALLOTMENT, ELBA-00-13: CHRISTEPH - KOSICH - Resolution No. 5446**  
*Action: **Adopted** Resolution No. 5446 Approving an Exception to Loss of Building Allocation (ELBA) and One-year Extension of Time to December 20, 2001.*
4. **SANITARY SEWER COLLECTION SYSTEM WET WEATHER MONITORING**  
*Action: **Authorized** City Manager to Execute Consultant Service Contract with Villalobos and Associates in the Amount of \$49,319 for Sanitary Sewer System Wet Weather Monitoring.*
5. **REIMBURSEMENT AGREEMENT FOR WATSONVILLE ROAD PUBLIC STORM DRAIN AND SEWER LIFT STATION IMPROVEMENTS**  
*Actions: **Approved** the Reimbursement Agreement and Authorize the City Manager to Execute the Agreement on Behalf of the City.*
6. **AB 1600 IMPACT FEE REPORT FOR THE FISCAL YEAR 1999/2000**  
*Action: **Accepted** and **Filed** the Impact Fee Report for the 1999/2000 Fiscal Year.*
8. **APPROVAL OF PURCHASE ORDER FOR FURNITURE AND PARTITIONS FOR CITY HALL WEST EXPANSION PROJECT**  
*Action: **Authorized** Purchase Order to Contract Office Group in the Amount of \$88,000 for the Purchase of New Furniture and Partitions for New Modular Building.*
12. **JOINT SPECIAL CITY COUNCIL AND PARKS & RECREATION COMMISSION MEETING MINUTES OF NOVEMBER 28, 2000**  
*Action: **Approved** the Minutes as written.*
13. **JOINT SPECIAL CITY COUNCIL, PLANNING COMMISSION AND GENERAL PLAN TASK FORCE MEETING MINUTES OF NOVEMBER 29, 2000**  
*Action: **Approved** the Minutes as written.*
14. **SPECIAL CITY COUNCIL MEETING MINUTES OF DECEMBER 5, 2000**  
*Action: **Approved** the Minutes as written.*
3. **ACCEPTANCE OF THE CITY OF MORGAN HILL SKATE PARK PAVING PROJECT**

Mayor Kennedy stated that the new skate park is an overwhelming success and is popular. He expressed concern regarding the entrance at Butterfield Boulevard with vehicles stopping and with surveillance of the area. He requested that these issues be addressed by staff in the near future.

**Actions:** On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0): 1) **Accepted** as Complete the Skate Park Paving Project in the

*Final Amount of \$61,310.50 and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

**7. ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR SAINT CATHERINE'S CHURCH (APN 767-04-010) - Resolution No. 5447**

Robert Bennich indicated that this was not the item he wished to address.

**Actions:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5447 Accepting the Public Improvements for Saint Catherine's Church, and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.*

**9. EXCEPTION TO LOSS OF BUILDING ALLOTMENT, ELBA-00-12: DEL MONTE - MONTARBO (DEL MONTE ESTATES)**

Bill McClintock, MH Engineering, representing his client, Mr. Nguyen, indicated that the project was given a six-month extension in June and that expiration of building allocations will occur on December 31, 2000 unless an extension of time is granted. This would result in the loss of seven building allotments of Phase I. He indicated that the project has been held up due to a law suit amongst the partners and that as of Monday, December 19, 2000, the law suit has been settled. Since most of the work was done in May and June 2000, the project is moving forward quickly and that the final map has been accepted by Public Works, fees paid, and bond(s) posted. It is hoped that the map will go on record on Friday, noting that next week will be a down time for the City. He stated that the applicant would like to begin processing the building permits in order to meet the definition of commencing construction (e.g., grading, installation of sewer laterals and water services). He requested that the City Council approve the exception to loss of building allotment for three months as the project is very close to commencing construction. He indicated that this is a blighted area and that \$16,000 in relocation assistance has been paid for the occupants of the duet units. Extension of the BMR units would allow the project to qualify as a partially completed project. This would give the project more than a 50% completion status. This project would be built in one phase as the other allotments expire in June 2001. He noted that Mr. Nyguen stands to lose a lot of money and that he felt that Mr. Nyguen has demonstrated good faith in moving forward once his hands were untied. He indicated that Nadia Oliver, attorney for the applicant, was present to address the City Council regarding the lawsuit.

Mayor Kennedy recommended that this item be deferred to the end of the Consent Calendar.

**Action:** *It was the consensus of the City Council to **continue** this item to the end of the Consent Calendar.*

**11. ADVENT GROUP MINISTRIES FIRE HYDRANT**

City Manager Tewes presented the staff report.

Council Member Chang inquired if the Advent Group Ministries is a religious group?

Mayor Kennedy stated that he was contacted by a representative of the Advent Group Ministries and that this group is a religious organization that operates a center for women in recovery. The Ministries is requesting permission to make modifications to the barn for day activities for the young women at the center. He indicated that when they approached the County, they were advised that they would have to provide a fire hydrant connection or install a large water storage tank. The Ministries has made a request to tie into an existing fire hydrant for this particular purpose.

**Action:** *On a motion by Council Member Chang and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** the City Manager to Negotiate and Execute a Contract with Advent Group Ministries for the Installation of a Fire Hydrant and Ongoing System Maintenance.*

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Agency Member Tate and seconded by Agency Member Chang, the Agency Commission unanimously (5-0) **approved** Consent Calendar Items 27 and 28 as follows:*

#### **27. NOVEMBER 2000 FINANCE AND INVESTMENT REPORT**

**Action:** ***Accepted** and **Filed** Report.*

#### **28. SERVICES AGREEMENT WITH MORGAN HILL CHAMBER OF COMMERCE FOR FISCAL YEAR (FY) 2000/01**

**Action:** ***Authorized** and **Directed** the Executive Director to Prepare and Execute a Contractual Services Agreement with the Morgan Hill Chamber of Commerce in the Amount of \$90,000 for FY 2000/2001.*

## ***City Council & Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Chang, the City Council/Agency Commission, on a 4-0-1 vote with Council/Agency Member Carr abstaining, **approved** Consent Calendar Items 22 and 23 as follows:*

**22. JOINT SPECIAL REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF NOVEMBER 29, 2000**

***Action: Approved the Minutes as written.***

**23. JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF NOVEMBER 29, 2000**

***Action: Approved the Minutes as written.***

***Action:***        *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Chang, the City Council/Agency Commission unanimously (5-0) approved Consent Calendar Items 24 and 25 as follows:*

**24. JOINT REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF DECEMBER 6, 2000**

***Action: Approved the Minutes as written.***

**25. JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF DECEMBER 6, 2000**

***Action: Approved the Minutes as written.***

## ***City Council Action***

### **CONSENT CALENDAR (cont'd.):**

**9. EXCEPTION TO LOSS OF BUILDING ALLOTMENT, ELBA-00-12: DEL MONTE - MONTARBO (DEL MONTE ESTATES) - Resolution No. 5448**

Director of Community Development Bischoff informed the City Council that denial of the Exception to Loss of Building Allocation (ELBA) would result in the loss of 7 of the 13 building allotments. He indicated that the basis for staff's recommendation of the denial is attributed to Measure P language (Section 18.78.140 of the Municipal Code) that states an ELBA can be granted if there are delays caused by the City either through environmental processing or other extended time periods for processing by the City. He said that this is not the case. He noted that the first extension granted was due to problems associated with the Water District. However, in this case, staff does not believe that there are any delays attributed to the City.

Mayor Pro Tempore Sellers inquired if there were grounds to grant an ELBA? Mr. Bischoff responded that he was not certain what the grounds would be based upon Measure P criteria. He noted that limited building inspections would occur during the furlough and that one could argue that the City would not be able to perform as needed and that the City Council may wish to grant an extension for a period of time in recognition of this fact.

Nadia Oliver, attorney for the applicant, requested that the City Council grant the ELBA on the grounds that there have been extended permit delays not the result of developer inaction. She addressed the lawsuit, noting that there is a lease pendency against the property. The lease pendency was based on allegations by a third party that they had certain rights to the property. She indicated that this matter has been resolved after numerous communications. Her client immediately filed demolition of the fourplex, provided relocation assistance, submitted: subdivision map title guarantee, check, original subdivision improvement agreement and performance bond. She did not believe that the delay can be attributed to applicant inaction, acknowledging that it is not the City's fault either. She indicated that the applicant has been diligently trying to get all these documents in place to commence the project. She noted that there is a deadline for seven foundations, that necessitates the request for an extension of a few months. It is understood that it is necessary to frame two below market units before receiving other foundation permits. She stated that the applicant is committed in moving forward with the project.

Mayor Pro Tempore Sellers stated that he was generally supportive of Measure P provisions that allows the City to pull permits, particular if the delay is not the city's fault. However, in this case, he felt that there were extenuating circumstances. He felt that staff has identified a finding to grant the exception, noting that this is a needed project that would provide housing. He stated his support of granting an ELBA for six months.

Council Member Tate recommended that a two-month extension be granted as the applicant only needs to commence construction of two BMR units.

City Attorney Leichter expressed concern with the interpretation of the Measure P language that states "permit delay is not the result of developer inaction" to mean that it can be a third party other which prevents the developer from proceeding with the project. She would be weary of granting an ELBA in this case because it could be interpreted to state that the inability of securing financing is not inaction by the developer. She stated that this language could be clarified as the city goes through its Measure P revisions next year. Should the Council wish to grant the ELBA, she requested that the resolution be revised to clarify that the action is limited to this specific factual circumstance due to this specific lawsuit. She stated that this is the first time that she has become aware of the lawsuit and that she has not had the opportunity to review the circumstances. She requested City Council latitude in drafting a resolution to very narrowly limit the interpretation of this specific language in the Municipal Code.

Council Member Chang expressed concern with granting the exception as the rules have been identified as part of Measure P. She said that in a lease pendency, the property owner has done something such as selling the property twice in order to cause the situation. She did not believe that delay was attributed to the City. Therefore, she would not support granting the ELBA.

Council Member Carr asked if the resolution could be written in such way to stipulate that at the end of the two month period, the applicant does not have the opportunity to come before the City Council for yet another extension. City Attorney Leichter stated that the Measure P language contained in the Municipal Code talks in terms of the first fiscal year. She was not aware of a situation where the City Council granted a third ELBA. Therefore, the city has established past practice to interpret the Measure P language to allow for two exceptions but not three.



**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council, on a 3-2 vote with Council Member Chang and Mayor Kennedy voting no, **Approved** Resolution No. 5448, Approving a two-month Extension of Time, amending the second "Whereas" clause to be more narrowly defined per the City Attorney's recommendation such that it would provide for this particular case and the circumstances surrounding this particular case.*

City Attorney Leichter requested that the applicant and/or their attorney provide her with a copy of the complaints and answers, including the lease pendency and any settlement agreements filed in the lawsuit.

#### **OTHER BUSINESS:**

#### **10. AWARD OF PURCHASE ORDER FOR CONSTRUCTION OF INTERIM TRAFFIC SIGNAL AT THE MAIN/CONDIT INTERSECTION - Resolution No. 5449**

City Manager Tewes indicated that this was an item approved in concept by the City Council during its discussion regarding a traffic strategy. This item has been revised to provide the City Council with the appropriate resolution that would make the necessary findings to award the contract by negotiations rather than through the normal competitive bid process. He recommended that the City Council adopt the resolution which makes special findings to allow the City to waive the formal competitive process and approves the purchase order.

**Action:** *On a motion by Council Member Chang and seconded by Council Member Tate, the City Council unanimously (5-0) 1) **adopted** Resolution No. 5449, Declaring the need for an emergency expenditure for construction of an interim traffic signal at the Main/Condit intersection in accordance with Public Contract Code 20168; and 2) **Approved** Purchase Order to San Jose Signal Electric Construction, Inc. in an Amount of \$66,893 for Installation of an Interim Traffic Signal at the Main/Condit Intersection.*

Mayor Kennedy stated that he was pleased to see that the City is moving forward quickly with the installation of a traffic signal at the intersection of Monterey Road and Main Avenue as this is an extremely hazardous intersection.

#### **PUBLIC HEARINGS:**

#### **15. RESOLUTION AUTHORIZING THE SANTA CLARA COUNTY FIRE MARSHAL TO HAZARDOUS VEGETATION (Continued from 12/6/00) - Resolution No. 5443**

Human Resources Manager Stevensen Dile presented the staff report. She indicated that this item was continued from the December 6 meeting due to posting requirements that needed to be met. These requirement have now been met. She indicated that Marty Hicks from the Santa Clara County Fire Marshal's office was present to address issues raised at the last meeting by a concerned resident.

Mayor Kennedy opened the public hearing. No input being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5443 Authorizing the Santa Clara County Fire Marshal to Abate Weeds.*

**16.     DEVELOPMENT AGREEMENT APPLICATION DA-00-02: MORGAN HILL RANCH BUSINESS PARK (Continued from 12/6/00) - Ordinance No. 1496, New Series**

Director of Business Assistance and Housing Services Toy presented the staff report.

Council Member Chang stated that at a General Plan Task Force meeting, the traffic consultant recommended that Butterfield Boulevard be connected to Monterey Road. It was suggested that a means of connection was through this Business Park. She requested that Director of Public Works Ashcraft explain a possible Monterey/Butterfield connection and recommended that this item be continued for 30-days in order to refer the road connection concept to the Planning Commission for its review and consideration.

Director of Public Works Ashcraft stated that this is a follow up from a joint workshop held three weeks ago by the City Council, Planning Commission, and the General Plan Task Force relating to traffic circulation. He said that a recommendation will be made by the Task Force that more specific studies be conducted in the future to show how the northern and southern extension of Butterfield can be accomplished to move the north/south traffic through the city efficiently. He identified a realignment concept that connects Butterfield to Monterey Road. He stated that this realignment would require substantial acquisition of right of ways and substantial cost in relocating existing infrastructure at a cost of approximately \$9.5 million. The benefit would be to move traffic off of Butterfield more efficiently onto Monterey Road without having to make multiple 90 degree turns. The downside would be the impact to development planned in the area that is substantial a ways along.

Council Member Chang recollected that the parcel below the intersection of Monterey and Cochrane is approximately five acres (area north of the retention pond). She asked if Venture Corporation could pick up the additional acres upon retirement of the road? Mr. Ashcraft said that if a road alignment is pursued, the four acres could be negotiated to trade back as much developable property as possible. However, if the City owns Cochrane Road as an easement only, the City could trade Venture Corporation the southerly half of the road but could not trade the northerly half as this property would most likely have to be given to the property owners to the north.

Council Member Chang noted that there has been some discussion about relocating the detention pond to an alternate location. She felt that eight acres in retention pond could be used by Venture Corporation.

In response to Council Member Carr's question, Mr. Aschraft stated that the proposed road alignment design would not affect the underpass.

Mayor Kennedy opened the public hearing.

Joe Mueller felt that a lot of new information has surfaced since the Planning Commission reviewed the development agreement in terms of what was discussed at the joint workshop. He noted that the consultant is recommending that the city somehow streamline the connection of Butterfield Boulevard to Monterey Road at both the north and south end of town. He felt that a connection at the north end of town would be difficult as it is where development is occurring and where the industrial parks are located. Looking at making a connection at Cochrane Road is one of the city's best opportunity to be completed in the near term and provide potential traffic relief. He felt that it was important to complete Butterfield all the way as soon as possible because the relief that will be seen from the widening of Highway 101 will be short lived. He noted that this new information was not available to the City 2.5 years ago and was not available 10 years ago as part of the general plan update, noting that it has been found that the traffic patterns of 10 years ago were low. Therefore, it was important for the city to look at a good solution. He felt that the long term solution for these kinds of traffic issues is mass transit.

Ralph Lyle stated that when you look at what has been presented this evening is a superior alignment that would eliminate a lot of left turns. He recommended that the city seek regional assistance to help pay for the alignment as this is a regional issue. If traffic can be diverted onto Butterfield, the City might not have to widen the underpass, an expensive operation.

Robert Bennich felt that the time is right to do something with respect to the Monterey/Cochrane intersection as the city is growing. He agreed that more individuals are using mass transit but not enough to get individuals out of their cars. One thing that needs to be considered is the traffic to be generated from the Sobrato High School. He felt that there has to be a way to alleviate the traffic flow coming down Monterey Road through the City. Butterfield would be a solution as it would be a natural flow. He encouraged the City Council to move forward with the proposal.

Gaye Quinne, Venture Corporation, stated that when she started negotiating the development agreement nine months ago, she did not know that this issue would be raised at the City Council public hearing. She noted that a letter was distributed to the City Council from Rob Eves in response to Council Member Chang's ideas. She requested City Council approval of the development agreement as written. She understood that there are big issues facing the City in terms of traffic but that it is felt that this is an inappropriate connection to the development agreement. She indicated that \$258,000 have been spent on the street design of the Jarvis extension which does not include architectural engineering for the buildings. Venture Corporation has entered into over \$650,000 in binding contracts with architects and engineers for the architecture of the buildings. It was her belief that there is a narrow window to get under construction to meet the demands of the current market. Venture Corporation is proceeding with submittals based on the existing approvals of the PUD, general plan and subdivision map approved by the City Council. She requested that the City Council consider the development agreement because of the advantages it gives to Venture Corporation for long term predictability. She stated that Venture Corporation has offered the City \$750,000 for the aquatic center. Should the project be delayed or the project not be able to move forward, the development agreements, the entitlements and the commitments would not be possible.

Council Member Chang requested that Venture Corporation allow the Planning Commission to review the road alignment concept. She stated that four or five years ago the plans included approximately 60 acres dedicated to

a golf course. She reviewed the minutes of April 1999 and that Venture Corporation identified four acres of land for a swim or volleyball complex. She felt that four acres of land is about the right size to install the intersection. She requested that Venture Corporation provide the City the opportunity to review the road alignment as there is a limited window of opportunity.

Ms. Quinne stated that had the request been made prior to the approval of the PUD and entering into financial commitments, Venture Corporation would have worked with the City. However, it is too late based on the commitments received from the City in March 2000, noting that this project is too far along in the process.

Council Member Chang felt that an extension is still possible as Venture Corporation still needs to return to the City Council to request assistance with the establishment of an assessment district for road installation. She requested that Venture Corporation grant the city one-month to evaluate the road alignment.

No further comments being offered, the public hearing was closed.

Council Member Tate felt that the proposal was an invitation for commuters to use Morgan Hill as a thoroughfare for the region. It was his belief that Highway 101 is the place to put traffic. He felt that the City has to double and triple its efforts to discuss five lanes, both north and south, on Highway 101 and include it in future planning. To give away our town and quality of life to major Los Angeles intersection was not his idea of what should be allowed in Morgan Hill. He stated that he did not want to consider this concept.

Council Member Chang stated that traffic exists whether it is acknowledged or not. This concept is the only way to protect the downtown and Santa Teresa from future traffic. She did not believe that Santa Teresa would be constructed to four lanes. With the new high school to the north, traffic would impact local streets.

Mayor Pro Tempore Sellers expressed frustration in having to reconsider something at this late date as it undermines the City's ability to hold up its agreements. If there was an omission that the City had not considered, he would have been willing to reopen discussion. He noted that there have been numerous opportunities to review this issue. He concurred with Council Member Tate that this is not the solution in terms of where the city needs to go. He stated that it was noted at the City Council, Planning Commission and General Plan Task Force joint meeting that these are 2025 plans down the road. He noted that 25 years ago, Butterfield Boulevard was not a concept and that it was planned for Santa Teresa to go all the way through. The traffic seen today will get worse but that he did not believe that this was the right solution. He felt that transit will be substantially improved with reverse commutes and home based businesses, including other alternatives that will come to pass. Therefore, he stated that he was not inclined to extend the discussion because it was important that the City show good faith to developers. Although there may be a way to connect Butterfield and Monterey Road 10 to 20 years from now, he felt that it should be dealt with at that point with the understanding the city has provided some options for widening Butterfield north of Cochrane. He felt that the City has retained maximum flexibility without effectively killing a major project that the City has already made a commitment to.

Council Member Carr agreed with Council Member Chang that the City needs to look at some way of connecting

Butterfield to Monterey Road. However, he was not sure if the identified connection was the right one. He was not convinced that the connection at the Cochrane/Monterey intersection is the right plan to help traffic congestion and felt that it should not be negotiated as part of this development agreement. He noted that it was stated that in March 2000, the City Council approved the actions needed by Venture Corporation to move forward with its project. He felt that prior to March 2000 was the time to discuss right of way for streets and connections. Whether the city approves or continues discussion of the development agreement does not hold up Venture Corporations ability to move forward with their project. He encouraged Council Member Chang to move forward with her discussions but that he did not believe that they have a bearing on this development agreement.

Council Member Chang stated that if the development agreement is approved, you would not be able to amend the project. She stated that this is the City's only opportunity to review the connection and that it was her hope that Venture Corporation would work with the city and help the city in looking at this road alignment concept.

Mayor Kennedy stated that he respects Council Member Chang's opinion but respectfully disagrees with her road alignment concept. He felt that the plans in place today to provide the Butterfield Boulevard connection from Main to Cochrane would immediately provide some traffic relief to Monterey Road. Once extended to Tennant, there will be some additional relief. It was his recollection that at the City Council, Planning Commission and General Plan Task Force joint meeting, it was recommended that the north and south Butterfield connection be set aside for study. If the agreement is approved this evening, it would rule out this alignment option. However, he did not believe that this was the end of the picture. He would prefer not to have the City cross its major arterials. He did not want to see Butterfield become a major means for commute traffic to get through the City. He felt that Highway 101 and mass transit are the ultimate solutions. He stated that he would be supporting the approval of the development agreement.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1496, New Series, approving the Development Agreement.*

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1496, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT WITH MORGAN HILL DEVELOPMENT PARTNERS, LLP FOR THE MORGAN HILL BUSINESS PARK by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: Chang; ABSTAIN: None; ABSENT: None.*

Council Member Chang stated that 20 years from now, the same traffic situation will exist that is being seen today.

Council Member Chang stepped down from the dais.

**17.     DEVELOPMENT AGREEMENT APPLICATION DA-99-06: MONTEREY - TBI/GOMES (MADRONE BUSINESS PARK) (Continued from 12/6/00) - Ordinance No. 1497, New Series**

Director of Business Assistance and Housing Services Toy presented the staff report. He noted that an amendment to Section 4.3 regarding the widening of Butterfield Boulevard has been made to the development agreement per the hand out distributed to the City Council this evening.

Council Member Tate stated that it was pointed out that the City is looking at future studies for ways to connect Butterfield to Monterey Road. He felt that this would occur north of Cochrane Road. He questioned whether the city should be giving away the capability of expanding Butterfield to six lanes?

City Manager Tewes stated that a development agreement was negotiated based on certain representations and that this adjustment comes to the City Council which has been mutually agreed to by both parties to the agreement.

Mayor Kennedy opened the public hearing.

Brad Krouskoup, applicant, informed the City Council that he has an approved general plan amendment, a PUD and final map. He stated that this development agreement has evolved over the past 14 months and that it has evolved to the benefit of everyone involved. The most recent change included staff coming to him acknowledging the issue of widening Butterfield Boulevard north of Madrone. He stated his willingness to provide a 72-foot right away that would accommodate four lanes. He said that Morgan Hill is trying to shoulder a huge weight of commuter traffic through town. He felt that a lot will be occurring that will help the traffic problem. He felt that more pressure should be placed on VTA and the state to widen Highway 101 as quickly and as wide as possible.

Council Member Sellers stated that two weeks ago, concerns were raised in the community regarding early construction hours. He requested that the applicant address some of the concerns expressed by community members.

Mr. Krouskoup felt that the PUD has adequate restrictions and that the development agreement does restate some of these requirements. He stated that he prides himself of being a good neighbor. He said that construction workers were over zealous and have created issues with the neighbors to the north. He did not believe that the issues will continue as he has placed stringent guidelines on the construction crews.

No further comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote (Council Member Chang absent), **Waived** the Reading in Full of Ordinance No. 1497, New Series, Approving the Development Agreement.*

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1497, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT WITH TBI-MISSION WEST, LLC FOR THE MADRONE BUSINESS PARK by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES:*

*None; ABSTAIN: None; ABSENT: Chang.*

**18. APPEAL OF COMMUNITY DEVELOPMENT DEPARTMENT FINDING OF INCONSISTENCY WITH THE ZONING ORDINANCE AND REJECTION OF MEASURE P APPLICATION MP 00-20: TILTON AVE.-GLENROCK/SHEA (Continued from 12/6/00) - Resolution No. 5444**

Council Member Chang stated that she would be abstaining from discussion of this item due to a conflict of interest.

Director of Community Development Bischoff presented the staff report and recommended City Council denial of the appeal request. He said that it would be the City Council's discretion to allow the applicant to amend the application to exclude units from his application and submit a 33-unit project or allow the applicant to amend the application to replace the 10 duet units with 10 single family units elsewhere. Should the City Council allow the applicant to proceed, the applicant would need to submit an amended application by January 15 in order to proceed with the Measure P process. Also, a zoning amendment application would need to be submitted if the applicant cannot provide or build the congregate care facility that was originally envisioned to allow some other type of use. He informed the City Council that the Planning Commission has not had the opportunity to review staff's determination and that there would not be sufficient time to refer this item to the Commission for a decision.

Council Member Tate felt that either this application does or does not meet the General Plan and the codes. He noted that the staff report has determined that the application does not meet the General Plan but that staff has identified alternatives. However, an application is due on a certain date and that it speaks for itself.

Council Member Carr asked if Measure P allows amendments to applications after the October 1 deadline? Mr. Bischoff responded that Measure P is silent on this issue.

Ralph Lyle stated that he is a Planning Commissioner and a member of the General Plan Task Force but that he is not representing either body. He noted that a school and congregate care facility were originally proposed. He noted that the applicant is not proposing either of these uses. He stated that the General Plan Task Force is recommending low density at the edges of the City and not high density, noting that this recommendation would need to be considered by both the Planning Commission and City Council. He recommended that the City maintain flexibility on what should go in this area. He noted that the applicant had additional unit capability on the east side of the road. The applicant could have left the area as a future application area as done in prior applications. He noted that the applicant is requesting 13 units for the first year and 33 units the second year. He felt that the applicant would have another year to return for additional units and felt that there is a problem in allowing modifications to an application. He did not believe that the applicant needs the current or anticipated zoning in this area. Another option to be considered is to direct the applicant to keep the application as submitted but direct staff not to score that portion of the application. Staff would score the project based on what is proposed on the other side. He expressed concern with the legal issues associated with allowing modifications.

Rocke Garcia, applicant, said that he met with staff on numerous occasions in August and September to develop

a Measure P plan. He said that the mistake included design work of future units. He indicated that he forgot to include an area in the development, noting that he is proposing a carriage house development. An alleyway is proposed to be used in the back to access the garages, noting that only a few garages would be fronting Daugherty Avenue. He and/or MH Engineering forgot to include the 12 future duet units. He felt that other similar mistakes have been made in the Measure P process in the past and that he did not believe that he should be penalized for the mistake. He originally proposed to include a congregate care in the project. The proposal is similar to that of the Terraces of Los Gatos. He stated that he would agree to modify the application to eliminate these units for this Measure P competition. He requested that the City Council allow him to modify the proposal as he did not believe that it would change his Measure P score in adding 10 single family units. He indicated that his zoning application submitted in January 2000 is awaiting for the conclusion of the General Plan update.

Mayor Pro Tempore Sellers asked if Mr. Garcia was backing away from the congregate care concept. If so, is it by choice or from indications received from the General Plan process? Mr. Garcia responded that once St. Louise Hospital was lost, his congregate care client backed out of the proposal.

No further comments being offered, the public hearing was closed.

Council Member Tate did not believe that the application met the General Plan nor codes. Allowing changes after the fact opens the City to complaints from other applicants. He felt that expenses can be applied toward next year's application.

Mayor Kennedy requested that staff identify past precedent. Mr. Bischoff did not recall a time when changes were allowed to occur following the deadline to submit an application. He noted that Mr. Lyle does not recall amendments being allowed following the application submittal deadline.

Mayor Pro Tempore Sellers felt that the City is looking at a situation in the future and that he agreed with Mr. Lyle that the application can be applied to the following year.

**Action:**        *Council Member Tate made a motion, seconded by Mayor Pro Tempore Sellers, to **Adopted** Resolution No. 5444, Denying the Appeal.*

Council Member Carr felt that this project would be delayed a year before the applicant is able to apply for the next phase of the project. He hopes that in the review of revisions to Measure P, the city looks at encouraging developments to continue in a thoughtful way that least disrupts the community. He did not want to set the precedent of allowing amendments after the application date. Therefore, he would support the motion.

**Vote:**    *The Motion carried 4-0-1 vote with Council Member Chang abstaining.*

Council Member Chang resumed her seat on the dias.

**OTHER BUSINESS:**



## **19. REVIEW OF ASSIGNMENTS AND APPOINTMENTS TO OUTSIDE AGENCIES**

The City Council identified assignments and outside agencies that they would be interested in relinquishing/serving on.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) concurred with the Mayor's Appointment of Council Members Serving on the Various Council Committees and Outside Agencies as follows:*

### **COUNCIL COMMITTEES AND OUTSIDE AGENCY ASSIGNMENTS**

**P = Primary**

**A = Alternate**

<b><u>Committee/Outside Agency</u></b>	<b><u>Assignment/s</u></b>
Association of Bay Area Governments (ABAG)	(P) Chang (A) Carr (A) Sellers
City/School Liaison Committee Morgan Hill Unified School District	(P) Sellers (P) Tate (A) Chang
Corporation Yard Commission	(P) Sellers (P) Tate
Finance & Audit Committee (Six Month Rotation)	(P) Sellers (10/00 to 3/01) (P) Kennedy (1/1 to 6/01) (P) Chang (4/01 to 9/01) (P) Carr (7/01 to 12/01) (P) Tate (10/01 to 3/02)
Joint Venture Silicon Valley Public Sector Roundtable	(P) Kennedy (A) Sellers
Legislative Subcommittee, City of Morgan Hill	(P) Kennedy (P) Sellers
Morgan Hill Chamber of Commerce	(P) Kennedy (A) Sellers
Santa Clara County Cities Association Executive Board	(P) Kennedy (A) Chang
Santa Clara County Cities Association Legislative Task Force	(P) Sellers (A) Tate

Santa Clara County Emergency Preparedness Council	(P) Tate (A) Carr
Santa Clara County Housing & Community Development Council Committee	(P) Carr (A) Sellers
Santa Clara County Library District Joint Powers Authority	(P) Tate (A) Sellers
Santa Clara County Pollution Prevention Program	(P) Carr
Santa Clara Valley Transportation Agency/MGM Group 4	(P) Kennedy (A) Chang
Santa Clara Valley Transportation Authority Board Representative	(P) Kennedy
Santa Clara County Valley Transportation Highway 101 Policy Advisory Board (PAB)	(P) Kennedy
(Mayor Kennedy stated that the Highway 101 Policy Advisory Board may require a member of the Board of the Directors to serve on this committee. He stated that he would investigate if this is the case.)	
Santa Clara Valley Transportation Authority Policy Advisory Committee (PAC)	(P) Chang (A) Sellers
Santa Clara Valley Water Commission	(P) Chang (A) Ashcraft
Santa Clara Valley Water District - <u>East</u> Flood Control Zone Advisory Committee	(P) Tate (A) Chang (A) Ashcraft
Santa Clara Valley Water District - <u>South</u> Flood Control Zone Advisory Committee	(P) Tate (A) Chang (A) Ashcraft
South County Joint Planning Advisory Committee	(P) Carr (A) Sellers
South County Regional Wastewater Authority (SCRWA)	(P) Chang (P) Carr (A) Sellers (A) Tate

Mayor Pro Tempore Sellers indicated that he serves on VTA's Community Ordinance Design which looks at design enhancements with the main project being extensions to light rail. He noted that most attendees are staff members with few elected representatives in attendance. He recommended that staff monitor this agency

assignment and that where appropriate, staff participate and/or attend.

## **SECOND READING OF ORDINANCE:**

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council **Adopted** Ordinances 1498, 1499 and 1500, New Series, as follows:*

### **20.    ADOPT ORDINANCE NO. 1498, NEW SERIES**

*An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 1446, New Series, to Amend the Development Agreement for Phases III & IV of the Mission Ranch Project Located on the South East Corner of Cochrane Road and Mission View Drive (Portions of APN 728-32-001, 002, 003, and 728-33-001) (DA-99-01) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

### **21.    ADOPT ORDINANCE NO. 1499, NEW SERIES**

*An Ordinance of the City Council of the City of Morgan Hill Approving a Precise Development Plan for a 100-Unit Multi-family Housing Project on a 7.17 Acre Parcel Located on the South East Corner of the Intersection of Butterfield Blvd. And East Dunne Avenue in the R-3/RPD (APN 817-11-060), (ZA-00-08) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

### **ADOPT ORDINANCE NO. 1500, NEW SERIES**

*An Ordinance of the City Council of the City of Morgan Hill Approving a Development Agreement for Phase I & II for Application MP 98-35: E. Dunne - First Community Housing (DA-00-04) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

## ***City Council & Redevelopment Agency Action - Continued***

### **OTHER BUSINESS:**

### **26.    ANNUAL FINANCIAL REPORTS FOR THE 1999-2000 FISCAL YEAR**

Director of Finance Dilles presented the staff report and indicated that the City is experiencing a healthy financial situation in both the General Fund and the Redevelopment Agency with increasing tax revenues along with other revenues than was projected at the budget hearings. He stated that should the economy turn, the City is in a good position with reserves that will allow flexibility in dealing with issues that come before the City Council or Redevelopment Agency.

City Manager/Executive Director Tewes indicated that the financial condition of the City has improved over the

year. The report suggests that the City Council's financial policies have led the City to a strong financial position.

Mayor/Chairman Kennedy requested that the hotel taxes be tract separately from Franchise fees in the future. He stated that he remembered a time that a \$3.3 million deficit was projected in the early 1990s. He noted that the City has come a long way from those days. He felt that this was positive and exciting news.

Council/Agency Member Tate stated that he enjoyed working with Finance Director Dilles and City Treasurer Roorda as a member of the Finance and Audit Committee the past six months. He indicated that he has learned about city financing and thanked them both.

Mayor/Chairman Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *By consensus, the City Council/Agency Board unanimously (5-0) **Accepted** and **Filed** the Financial Reports for the Year Ended June 30, 2000: 1) Comprehensive Annual Financial Report for the City, 2) Annual Financial Statements for the Redevelopment Agency, and 3) "Single Audit" of Federal Dollars Received by the City.*

## ***City Council & Redevelopment Agency Action(s)***

### **CLOSED SESSION:**

City Attorney/Agency Counsel Leichter announced the following closed session items:

#### **1.**

##### **CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION**

Legal Authority:                Government Code 54956.8 & 54956.9(c) (1 potential case)  
Real Property(ies) involved:        APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Road (St. Louise Hospital property)  
City Negotiators:                Agency Members; Executive Director; Agency Counsel;  
Closed Session Topic:                Potential Litigation

#### **2.**

##### **CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION & CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority:                Government Code 54956.8 & 54946.9(c)  
Real Property Involved:        9.4, 17.80, and 3.8 acre parcels located on the east side of Condit Road, bound be Condit Road, Tennant Avenue, Barrett Avenue and Murphy Avenue (APNs 817-13-11 & 017 and 008)  
  
Negotiating Parties:  
    For City/Agency:                City Manager/Executive Director; Public Works Director, Director of Business Assistance & Housing Services; City Attorney/Agency Counsel; Special Counsel  
  
    For Property Owners:                Sergi, J/Kenneth/Karen; Lomato, V.; Monteza, S.  
Under Negotiation:                Price and Terms of Payment

3.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION & CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code 54956.8 & 54946.9(c)  
Property: APN 779-04-010; 14465 Monterey Road; 29.2 acres  
Negotiating Parties:  
    For City/Agency: City Manager/Executive Director; Public Works Director, Director of Business Assistance & Housing Services; City Attorney/Agency Counsel; Special Counsel  
    For Property Owners: William Sing and Young Kay Mock; The GFI Company  
Under Negotiation: Price and Terms of Payment

4.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION & CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code 54956.8 & 54946.9(c)  
Property: APN 817-13-001; 37.8 acres (Soccer Complex)  
Negotiating Parties:  
    For City/Agency: City Manager/Executive Director; Public Works Director, Director of Business Assistance & Housing Services; City Attorney/Agency Counsel; Special Counsel  
    For Property Owners: Tadashi & Alice A. Kadonaga, Trustee  
Under Negotiation: Price and Terms of Payment

5.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION & CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code 54956.8 & 54946.9(c)  
Property: APN 825-06-002, 003, 029, 030; 36.6 acres (Railroad/Maple - Butterfield Retention Basin Site)  
Negotiating Parties:  
    For City/Agency: City Manager/Executive Director; Public Works Director, Director of Business Assistance & Housing Services; City Attorney/Agency Counsel; Special Counsel  
    For Property Owners: Costa Family Partners  
Under Negotiation: Price and Terms of Payment

6.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION & CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code 54956.8 & 54946.9(c)  
Real Property Involved: A 8.49 acre parcel located on West Edmundson Avenue, east of Community Park (APN 767-18-025)  
Negotiating Parties:  
    For City/Agency: City Manager/Executive Director; Public Works Director, Director of Business Assistance & Housing Services; City Attorney/Agency Counsel; Special Counsel  
    For Property Owners: Gundersen Trust Partnership Trustee  
Under Negotiation: Price and Terms of Payment

7.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION & CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code 54956.8 & 54946.9(c)  
Real Property Involved: An 8.25 acre parcel located on Diana Avenue, west of the Future Butterfield

	Boulevard extension (APN 726-12-006)
Negotiating Parties:	
For City/Agency:	City Manager/Executive Director; Public Works Director, Director of Business Assistance & Housing Services; City Attorney/Agency Counsel; Special Counsel
For Property Owners:	Kontrabecki Associates ( or appropriate owner)
Under Negotiation:	Price and Terms of Payment

**8.**

**CONFERENCE WITH LEGAL COUNSEL: EXISTING LITIGATION**

(Subdivision (a) of Section 54956.9)

Name of Case: City of San Jose v. Morgan Hill Unified School District, City of Morgan Hill, and South San Jose Interests; Santa Clara County Superior Court

**PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION:**

Mayor/Chairman Kennedy adjourned the meeting to closed session at 10:29 p.m.

**RECONVENE:**

Mayor/Chairman Kennedy reconvened the meeting at 11:35 p.m.

**CLOSED SESSION ANNOUNCEMENT:**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken on the above listed closed session items.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS:**

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:36 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**Irma Torrez, City Clerk**